

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

John Francis Dykeman, #14854, <i>aka</i> John Francis Dykeman, Jr.,)	C/A No. 02:07-cv-00526-GRA
)	
)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	(Written Opinion)
Phillip A. Foot,)	
)	
Respondent.)	
)	

This matter comes before the Court for review of the magistrate's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(c). Petitioner filed this action on February 23, 2007 seeking habeas corpus relief pursuant to 28 U.S.C. § 2241. The magistrate judge issued his Report and Recommendation on April 20, 2007, recommending that this petition be dismissed without prejudice and without requiring Respondent to file an answer. On June 26, 2007, Petitioner filed a motion to withdraw and dismiss this action. For the following reasons, the Court accepts the recommendation of the magistrate and, in effect, grants the request of the Petitioner.

Petitioner is proceeding *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This

Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

The magistrate makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate with instructions.” *Id.*

In order for objections to be considered by a United States District Judge, the objections must be timely filed and must specifically identify the portions of the Report and Recommendation to which the party objects and the basis for the objections. Fed. R. Civ. P. 72(b); see *United States v. Schronce*, 727 F.2d 91,94 n.4 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841, 845-47 nn.1-3 (4th Cir. 1985). “Courts have . . . held *de novo* review to be unnecessary in . . . situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendation.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Furthermore, in the absence of specific objections to the

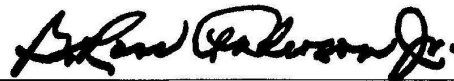
Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983).

Petitioner did not file objections to the Report and Recommendation. Instead, Petitioner filed a motion with this Court seeking dismissal of his habeas petition "due to his recent request placed with lower court and lower court's acknowledgment of filing his writ for habeas relief." Motion, p. 1. The Court considered Petitioner's request along with the Report and Recommendation, noting that both suggest dismissal of this claim without prejudice.

After a review of the magistrate's Report and Recommendation, this Court finds the report is based upon the proper law. Accordingly, the Report and Recommendation is accepted and adopted in its entirety. By adopting the Report and Recommendation, this Court, in effect, also grants Petitioner's motion to withdraw this action.

IT IS THEREFORE ORDERED that this case be DISMISSED *without prejudice* and without requiring Respondent to file an answer. Further, Petitioner's request for an evidentiary hearing, appointment of counsel, and change of venue are denied.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

July 3, 2007

Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.